

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Kurt Naumann,

Complainant,

vs.

Marv Stai,

Respondent.

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
ORDER**

The above-entitled matter came on for an evidentiary hearing on October 30, 2006, before a panel of three Administrative Law Judges: Eric L. Lipman (Presiding Judge), Bruce Johnson, and Steve Mihalchick. The hearing record closed at the conclusion of the hearing that day.

Kurt Naumann (Complainant), 9401 460<sup>th</sup> Street, Harris, MN 55032, appeared on his own behalf with assistance from Richard Smisson. Marv Stai (Respondent), 5206 – 429<sup>th</sup> Street, Harris, MN 55032, made no appearance.

**NOTICE**

This is the final decision in this case, as provided in Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

**STATEMENT OF ISSUES**

Did Respondent violate Minn. Stat. § 211B.10 by soliciting or receiving \$400 in cash, the promise of a future appointment to a city government position, or favorable zoning consideration for his property, in return for his withdrawal from the race for Mayor of Harris, Minnesota?

The panel concludes that the Complainant failed to establish that Respondent violated Minn. Stat. § 211B.10. The Complainant is therefore dismissed.

Based upon the entire record, the panel makes the following:

## FINDINGS OF FACT

1. The Complainant is the campaign chairman for Richard Smisson, the incumbent Mayor of Harris.<sup>[1]</sup>

2. The Respondent is a resident of Harris and the owner and operator of a motor-cross track. Sometime in the summer of 2006, the Respondent decided to run as a candidate for Mayor of Harris, Minnesota. The Respondent was motivated to run primarily by his opposition to the incumbent Mayor, Rick Smisson. The Respondent believes that Mayor Smisson does not share his values or vision for Harris, and he believes that Harris needs new leadership. The Respondent was not aware of any other candidates willing to challenge Mayor Smisson, and so on September 6, 2006, he filed as a candidate for Mayor.<sup>[2]</sup>

3. Marcus Shelander and Kenneth Kabanuk are residents of Harris. Mr. Shelander was one of three candidates who ran for Mayor of Harris in 2004. He was defeated by Richard Smisson. Mr. Kabanuk is a roofer by trade and is also the property manager of Big Daddy's Bar and Grill in Harris.<sup>[3]</sup>

4. Like the Respondent, Shelander and Kabanuk are opposed to the re-election of incumbent Mayor Smisson. Shelander and Kabanuk belong to a group of Harris residents that supports a slate of candidates challenging the incumbent Mayor and two incumbent city council members. This group has been supporting Larry Nelson for Mayor, and Rodney Larson and John Pelant for city council. Among other issues, these residents are concerned about the costs associated with the wastewater treatment plant and Mayor Smisson's vision of Harris becoming a "horse and stable community."<sup>[4]</sup>

5. Prior to September 12, 2006, the Respondent had discussed with his wife the possibility of withdrawing as a candidate for Mayor. The Respondent had doubts about his suitability for the job. Although the Respondent had not made up his mind with any certainty, by September 12, 2006, the Respondent felt close to dropping out of the Mayoral race.<sup>[5]</sup>

6. On the morning of September 12, 2006, Shelander and Kabanuk were putting up lawn signs in support of their slate of candidates. They put up signs on the lawn of a Paul Carlson, including a sign in support of Larry Nelson for Mayor. Mr. Carlson lives next door to the Respondent and he mentioned to Shelander and Kabanuk that the Respondent was running for Mayor. Shelander, Kabanuk and Carlson decided to go talk to the Respondent about Larry Nelson's candidacy. At about 10:00 a.m. on September 12, 2006, Shelander, Kabanuk, and Carlson walked over to the Respondent's house and talked with him in his driveway. Shelander asked the Respondent if he was running for Mayor. The Respondent indicated that he was thinking about dropping out of the race and admitted that he felt overwhelmed and was not sure he was qualified for the position. Shelander and Kabanuk told the Respondent that they belonged to a

group of about 30 residents who were supporting Larry Nelson for Mayor. They discussed with the Respondent Larry Nelson's views on the issues and suggested that the Respondent meet with their group to learn more about the slate of candidates they were supporting. Shelander and Kabanuk told the Respondent that their group had met with Richard Long, a candidate for city council, the day before and after listening to what the group had to say, Mr. Long withdrew as a candidate and was now supporting Larry Nelson. Shelander and Kabanuk also explained to the Respondent that they would have a better chance of beating incumbent Mayor Smisson if they all united behind one candidate, instead of having a three-way race.<sup>[6]</sup>

7. The Respondent told Shelander, Kabanuk and Carlson that it would not be necessary for him to meet with their group, and that it sounded like Larry Nelson shared his views. However, the Respondent stated that he needed some time to think about what they had told him and to discuss the matter with his wife. The Respondent suggested that Shelander, Kabanuk and Carlson return to his home later. Shelander, Kabanuk, and Carlson left the Respondent's house and went back to Carlson's home. A short time later they returned, and the Respondent informed them that he had decided to withdraw from the race and would support Larry Nelson's candidacy. Shelander and Kabanuk suggested that if Larry Nelson was successful in his bid for Mayor, the Respondent could consider applying for a position on the planning commission or park board as a way to get involved in city government. Shelander assured the Respondent that Mr. Nelson would be willing to consider his application.<sup>[7]</sup>

8. After the Respondent stated that he would withdraw from the race, Kabanuk told the Respondent that he felt bad for the time and money the Respondent had already put into his campaign. The Respondent stated that he had incurred costs for "his time and gas" while campaigning. Kabanuk offered to donate to Respondent's campaign to help defray some of these costs and suggested he would try and get others to donate as well.<sup>[8]</sup>

9. That same day, Mr. Kabanuk put \$400 in cash in an envelope and left it at Big Daddy's bar for the Respondent. The Respondent sent his roommate to the bar to pick up the envelope.<sup>[9]</sup>

10. The Respondent did not give Kabanuk a receipt for this donation.

11. The Respondent filed his withdrawal of candidacy on September 14, 2006.<sup>[10]</sup>

12. The Complainant filed this Complaint with the Office of Administrative Hearings on October 6, 2006.

Based upon the foregoing Findings of Fact, the panel makes the following:

## **CONCLUSIONS**

1. Minn. Stat. § 211B.35 authorizes the panel of Administrative Law Judges to consider this matter.

2. Minn. Stat. § 211B.10, subdivision 1 provides as follows:

A person may not reward or promise to reward another in any manner to induce the person to be or refrain from or cease being a candidate. A person may not solicit or receive a payment, promise, or reward from another for this purpose.

3. The burden of proving the allegations in the complaint is on the Complainant. The standard of proof of a violation of Minn. Stat. § 211B.10 is a preponderance of the evidence.<sup>[11]</sup>

4. The Complainant has failed to demonstrate that the Respondent solicited or received a payment or promise of reward as an inducement to withdraw from the Harris Mayoral race in violation of Minn. Stat. § 211B.10.

Based upon the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

## **ORDER**

IT IS ORDERED:

That the Complaint in this matter is DISMISSED.

Dated: November 2, 2006

/s/ Eric L. Lipman  
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ERIC L. LIPMAN  
Presiding Administrative Law Judge

/s/ Bruce H. Johnson

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BRUCE H. JOHNSON  
Administrative Law Judge

/s/ Steve M. Mihalchick  
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STEVE M. MIHALCHICK  
Administrative Law Judge

## **MEMORANDUM**

Minnesota Statutes § 211B.10, subdivision 1, prohibits a person from soliciting or receiving a “payment, promise, or reward” as an inducement to cease being a candidate. The Complainant alleges that the Respondent violated this statute by accepting \$400 in cash, and the promise of both a future appointment to a city position and favorable zoning consideration for his motor-cross track, in return for his withdrawal from the race for Mayor of Harris, Minnesota.

The burden is on the Complainant to establish that the Respondent violated Minn. Stat. § 211B.10. The standard of proof is a preponderance of the evidence. The only testimony presented in this matter came from the Respondent at the probable cause hearing, and from Mr. Shelander and Mr. Kabanuk at the evidentiary hearing. Both the Respondent and Mr. Kabanuk testified that Mr. Kabanuk offered money to the Respondent only after the Respondent announced that he would withdraw as a candidate for Mayor. Both also testified that the offer of money was not related to or conditioned upon Mr. Stai withdrawing from the race. Rather, both insisted that Mr. Kabanuk offered

the money as a donation to defray some of the costs incurred by Mr. Stai while campaigning for Mayor. The panel carefully considered the sworn testimony of the witnesses and compared the competing versions of events with other evidence in the record.

As for the allegation concerning the promise of a future appointment to a city position, Mr. Shelander, Mr. Kabanuk and Mr. Stai all testified that Shelander and Kabanuk suggested to Mr. Stai only that if Larry Nelson was successful in his bid for Mayor, Mr. Stai might be considered for a position on the planning commission or park board as a way to get involved in city government. The “promise” of future consideration, which would be available to all citizens of Harris, is not a promise to confer a specific future benefit.

Finally, with respect to the allegation that the Respondent was promised favorable zoning for his motor-cross track, the Respondent, Mr. Shelander and Mr. Kabanuk all testified that such a promise was never made. In addition, Paul Carlson submitted a sworn statement denying that any such promise was made in his presence on September 12, 2006.<sup>[12]</sup>

The Complainant has presented only two written statements in support of the allegations. The first is the Complainant’s own statement regarding his conversation with the Respondent on October 3, 2006. The second is a written statement from Mayor Rick Smisson regarding his October 3, 2006, telephone conversation with the Respondent that was conducted over the speakerphone in the presence of two members of Mayor Smisson’s “prayer team.” According to the Complainant’s statement, the Respondent told him that Mr. Shelander and Mr. Kabanuk pressured him to withdraw from the race and assured him that if he did withdraw and Larry Nelson won, he would be appointed to a city position and receive “all the zoning required” for his dirt track. The Complainant also states that the Respondent told him that Mr. Kabanuk offered the Respondent money to cover any costs he had incurred campaigning. According to Mayor Smisson’s statement, the Respondent said that Mr. Shelander and Mr. Kabanuk promised to “protect his track” and give him a position in city government if their candidates were successful. In his written statement, Mayor Smisson also states that Respondent said that Mr. Kabanuk’s offer of cash was contingent open Respondent accepting “their offer.”<sup>[13]</sup> Although present at the hearing, Mr. Smisson did not testify.

The panel concludes that the evidence is insufficient to prove that Marv Stai solicited or received the \$400 in cash or a promise of a future city appointment or favorable zoning as an inducement to withdraw as a candidate for Mayor. Although it is far from clear why Mr. Kabanuk would give Mr. Stai \$400 in cash for an undetermined amount of costs allegedly incurred by the Respondent while campaigning, the Complainant has failed to put forward sufficient evidence to prove that the cash was given as an inducement to withdraw his candidacy. Accordingly, the Complaint is dismissed.

E.L.L., B.H.J., S.M.M.

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<sup>[1]</sup> Ex. 5.

<sup>[2]</sup> Testimony of Respondent at probable cause hearing; Ex. 7.

<sup>[3]</sup> Testimony of Shelander and Kabanuk.

<sup>[4]</sup> Testimony of Shelander; Ex. 2 and 5.

<sup>[5]</sup> Testimony of Respondent at probable cause hearing.

<sup>[6]</sup> Testimony of Shelander and Kabanuk; Testimony of Stai at probable cause hearing; Ex. 1 and 2.

<sup>[7]</sup> Testimony of Shelander and Kabanuk; Testimony of Stai at probable cause hearing.

<sup>[8]</sup> Testimony of Kabanuk; Testimony of Stai at the probable cause hearing.

<sup>[9]</sup> Testimony of Kabanuk; Testimony of Stai at the probable cause hearing.

<sup>[10]</sup> Ex. 7.

<sup>[11]</sup> Minn. Stat. § 211B.32, subd. 4.

<sup>[12]</sup> Ex. 6.

<sup>[13]</sup> Ex. 5; Naumann statement attached to Complaint.